

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
VARIANCE STAFF REPORT (#FZV-20-03)
JTC PROPERTIES, LLC
DECEMBER 4, 2020

I. GENERAL INFORMATION

A. Project Description

A report to the Flathead County Board of Adjustment regarding a request from JTC Properties, LLC for a variance to Sections 3.16.040(5) of the Flathead County Zoning Regulations (FCZR). The variance request would apply to property located at 283 and 287 Eagle Bend Drive in Bigfork. The property is located within the Bigfork Zoning District and zoned RC-1 Residential Cluster. The applicant is requesting a ‘during or after-the-fact’ variance to exceed the permitted lot coverage requirements of the RC-1 zoning for the structure.

B. Application Personnel

Owner	Applicant
JTC Properties, LLC	Aja Thomas
365 Riverbend Road	805 Broken Choker Lane
Bigfork, MT 59911	Bigfork, MT 59911

C. Process Overview

1. Land Use Advisory Committee/Council

The proposed land use is located within the advisory area of the Bigfork Land Use Advisory Committee (BLUAC). The BLUAC will conduct a public hearing on the proposed conditional use permit on December 17, 2020 at 4:00 P.M. at Bethany Lutheran Church, located at 8559 Highway 35, Bigfork, MT 59911. A recommendation from the BLUAC will be forwarded to the Flathead County Board of Adjustment for their consideration.

Update December 14, 2020

On December 14, 2020, the Bigfork Land Use Advisory Council (BLUAC) held a public hearing on the proposal. The BLUAC voted 4-1 to accept the Findings of Facts as amended. They voted 3-2 to recommend denial.

2. Board of Adjustment

The Flathead County Board of Adjustment will conduct a public hearing on the proposed zoning variance on January 5, 2020 beginning at 6:00 P.M., remotely via Zoom. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, located on the second floor of the South Campus Building.

II. PROPERTY CHARACTERISTICS

A. Property Location and Size

The subject property is a total of 0.194 acres and is located at 283 and 287 Eagle Bend Drive, Bigfork, MT 59911 (see Figure 1 below). The property can be legally described as Lot 56A of Eagle Bend Subdivision 20 in Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

[illegible]

The subject property is located in the Bigfork Zoning District and zoned 'RC-1 Residential Cluster'. A duplex and attached garage is currently existing on the property. The property contains steep slopes along the western portion of the lot and rock outcroppings.

Adjacent Land Use(s) and Zoning

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[illegible]

Summary of Request
The applicant is requesting a ‘during or after-the-fact’ variance for a structure which exceeds the 40% permitted lot coverage for the property within the RC-1 zone. If a variance were granted, the structure would exceed the maximum lot size by 3.48%. The application indicates the hardship is a result of the lot size and topography and a variance is needed to have “a deck on the second floor.”

‘Lot Coverage’ is defined in Section 8.12.050 FCZR as, “*That portion of the lot that is occupied by any building or structure.*”

Figure 3: West side of structure - overlooking the Eagle Bend Clubhouse





III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on November 25, 2020:
 - Bigfork Fire District
 - Bigfork Water & Sewer District
 - Flathead City-County Environmental Health Department
 - Flathead County Road and Bridge Department
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
 - Flathead County Road and Bridge Department
 - Comment: “[...] At this point in time, the County Road Department does not have any comments on this request.” Letter received November 30, 2020

B. Public Comments

1. Notification was mailed to property owners within 150 feet of the subject property on December 10, 2020 pursuant to Section 2.05.030(2) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the December 20, 2020 edition of the Daily Interlake.
2. Public Comments Received

As of the date of the completion of this staff report, no written public comments have been received regarding the requested variance. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for January 5, 2021. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states, '*No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case.*'

A. Strict compliance with the provision of these regulations will:

1. Limit the reasonable use of the property

The application states, "Due to the topography (solid rock), there is no available land for a lawn, so in order to create an outside enjoyment area the contractor/owners were forced to build a deck on the second floor. Due to the rock and adjacent Eagle Bend Clubhouse, we were unable to blast out enough rock for a first floor patio or deck within three feet of the ground." The RC-1 zone requires a lot coverage of no more than 40 %. The applicant is requesting a 'during or after-the-fact' variance to exceed the maximum lot coverage by 3.48% in order to accommodate the attached decks that have been constructed more than three feet above the ground. There are three decks, one belongs to the north unit and two belong to the south unit. The deck attached the north unit is 148 square feet. The two south unit decks are 126.5 and 152 square feet. The total of all decks combined is 426.5 square feet. The total square feet of the structure including decks is 3,675 square feet. According to the applicant's site plan, the decks are encroaching on the maximum lot coverage.

Based on staff's site visit, the decks could be reduced in size, which would place them within the permitted lot coverage.

Finding #1: Strict compliance with the regulations would not limit the reasonable use of property because the applicants could reduce the deck size, in accordance with the permitted lot coverage requirements.

2. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district:

The subject property is located adjacent to other multi-family residential lots situated on the hill that encompasses much of the Eagle Bend development and other properties are likely subject to slopes that could require additional engineering and additional costs for development. However, the subject property has unique topography due to slopes and rock outcroppings. The application also notes, "All of the townhomes on this street have the same topography issues where the land is solid rock and being so close to the Eagle Bend Clubhouse there is no available area for a lawn or patio for outside seating and enjoyment." It appears strict compliance with the provision of the regulations may deprive the applicant of rights enjoyed by other properties similarly situated on the same hillside that were constructed before the current RC-1 zoning was established and additionally due to the nature of the topography.

Finding #2: Strict compliance with the regulations has the potential to deprive the applicant of rights enjoyed by other properties similarly situated in the district because similar properties along Eagle Bend Drive were constructed prior to the RC-1 zoning and the topography of this lot may not have allowed for a ground-floor deck or lawn that was less than three feet above the ground.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The application states, "The land is solid rock, and the contractors/owners were unable to blast through enough for a lawn/patio area or deck within three feet of the ground for outside

enjoyment.” The average lot size within the subdivision is approximately 0.34 acres. As the application indicates, the lot at the western boundary contains large rock outcroppings and steep slopes, which reduce the buildable area.

Although there are development constraints due to the topography, the decks could be reduced in size.

Finding #3: The hardship appears to be a result of the steep slopes and large rock outcroppings.

C. The hardship is peculiar to the property.

The application states, “This particular lot is made up solely of rock, typically there is at least some area that can be utilized for outside enjoyment but with this lot it simply wasn’t an option.” The lots directly to the north of the subject property, along the west side of Eagle Bend Drive, are similarly situated on top of a hill with steep terrain and large rock outcroppings. Adjacent lots to the north of the subject property appear to be larger in size and would likely have building areas similar to the subject property.

Finding #4: The hardship appears to be peculiar to the subject property because the developed lots along the west side of Eagle Bend Drive have larger buildable areas as a result of topography due to larger lot size, increasing the buildable area.

D. The hardship was not created by the applicant.

According to the application, “The contractors/owners had no control over the topography of the lot. The corner pins on the lot did not exist, so the surveyor put offset pins on the top of the rock, at that point, the contractor was focused on the setback requirements and unintentionally missed the RC-1 requirement of a 40% lot coverage maximum. Additionally, had the contractors/owners tried to remove all of the rock, a structurally sound AND aesthetically pleasing (to the surrounding residences and Golf Course) structure could not have been possible.” While the applicant was aware of the lot size and topography of the property when the property was purchased, the property owner was not involved in the creation of the lot.

Finding #5: The alleged hardship was created by the applicant because the alleged hardship relates to topographic features and other physical characteristics of the site.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The application states, “The rock no doubt created significant construction challenges, but a reasonable economic solution was possible for an outside enjoyment area in the form of decks on the second floor that were more than three feet off the ground. To allow for a deck three feet or less off the ground, a substantial amount of rock would have had to be removed. We built the decks to take advantage of the topography and the posts in the middle deck is less than four feet tall, the outside posts are taller to match the grade.”

Although a reasonable or viable alternative exists, there would likely be additional construction costs to reduce the size of the decks, since the decks have already been constructed.

Finding #6: The hardship appears to be economic because the property does not contain adequate buildable area due to topography and by reducing the size of the existing decks, it would incur construction costs.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The application states, “Should the Board decide to grant the variance, it is our belief the surrounding neighboring properties will not be adversely affected but rather a favorable affect in the form of a beautifully designed and constructed townhome duplex to compliment the other townhome duplexes on the street. All of the townhomes on the street to the north were platted

and built in the 1980's and have the same topography challenges." If granted, the variance would allow the existing decks to remain. Based on staff's site visit and the submitted site plan, it appears as though the decks will not adversely affect neighboring properties or the public.

Finding #7: Granting the variance would not adversely affect neighboring properties or the public because the deck size would not affect access or setback requirements, the Bigfork Water and Sewer District did not submit comment, and no comment was received from the Bigfork Fire District.

G. The variance requested is the minimum variance, which will alleviate the hardship.

The application states, "We feel the variance of an additional 3.5% of the permitted lot coverage is very minimal and will alleviate the hardship. The owners attempted to buy the property bordering the lot on two sides from Eagle Bend, solid rock to the west or an unusable piece to the south in order to meet the 40% threshold." The request does not appear to be the minimum required because another alternative exists that would require the applicant to reduce the size of the existing decks.

Finding #8: The variance requested does not appear to be the minimum variance, which would alleviate the alleged hardship because the decks could be reduced in size and no variance would be required.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The application states, "The neighboring townhomes were built before zoned in the 80's. To our knowledge, there is no such variance that was denied to other properties in the same neighborhood. If there are other variances that were denied of the same nature for the same zoning district, it is unlikely they were due to the same challenges we faced with this lots topography." The variance is not expected to confer a special privilege that is denied other similar properties in the same district. All of the lots along Eagle Bend Drive are situated on lots with less rock and less steep slopes.

Finding #9: Granting the variance would not confer a special privilege that is denied to other properties in the district because similar properties in the same area have less rock and less steep buildable areas.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations would not limit the reasonable use of property because the applicants could reduce the deck size, in accordance with the permitted lot coverage requirements.
2. Strict compliance with the regulations has the potential to deprive the applicant of rights enjoyed by other properties similarly situated in the district because similar properties along Eagle Bend Drive were constructed prior to the RC-1 zoning and the topography of this lot may not have allowed for a ground-floor deck or lawn that was less than three feet above the ground.
3. The hardship appears to be a result of the steep slopes and large rock outcroppings.
4. The hardship appears to be peculiar to the subject property because the developed lots along the west side of Eagle Bend Drive have larger buildable areas as a result of topography due to larger lot size, increasing the buildable area.
5. The alleged hardship was created by the applicant because the alleged hardship relates to topographic features and other physical characteristics of the site.

6. The hardship appears to be economic because the property does not contain adequate buildable area due to topography and by reducing the size of the existing decks, it would incur construction costs.
7. Granting the variance would not adversely affect neighboring properties or the public because the deck size would not affect access or setback requirements, the Bigfork Water and Sewer District did not submit comment and no comment was received from the Bigfork Fire District.
8. The variance requested does not appear to be the minimum variance, which would alleviate the alleged hardship because the decks could be reduced in size and no variance would be required.
9. Granting the variance would not confer a special privilege that is denied to other properties in the district because similar properties in the same area have less rock and less steep buildable areas.

VI. CONCLUSION

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Upon review of this application, the request to allow for a reduced front setback is generally not supported by the review criteria and the Findings of Fact listed above.

Planner: LM